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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

**Federal Communications Commission  
Office of Secretary**

In the Matter of )

Federal-State Joint Board on )  
Universal Service )

CC Docket No. 96-45

**REPLY COMMENTS OF CITIZENS UTILITIES COMPANY ON THE  
FEDERAL-STATE JOINT BOARD'S UNIVERSAL SERVICE  
RECOMMENDED DECISION**

Citizens Utilities Company, on behalf of itself and its telecommunications subsidiaries (hereinafter referred to, collectively, as the "Citizens Companies"), by its attorney, hereby submits its reply comments on the Federal-State Joint Board's Universal Service Recommended Decision, released November 8, 1996 (the "*Joint Board Recommendations*"), and shows as follows:

**I. Introduction**

The Citizens Companies will limit their reply comments to a singular matter -- the Joint Board's suggestion that existing special rates negotiated between carriers and schools/libraries or secured through state action can function as base rates of the application of Section 254(h) discounts.<sup>1</sup> The Citizens Companies have suggested that this otherwise sound suggestion does not contemplate the situation in which an incumbent local exchange carrier agreed to a level of below-cost rates for a defined subset of schools and libraries, such as all elementary schools in a service area, as part of a negotiated resolution of a state earnings' investigation.<sup>2</sup> In this case, the rates were not related to the carrier's cost of service. Instead, the rates are a function of a

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<sup>1</sup> *Joint Board Recommendations* at ¶ 571.

<sup>2</sup> *Citizens Comments* at Section III(D).

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bargained arrangement to settle an overearnings issue in an investigation or rate case. In this case, it would not be fair or appropriate to use those rates as the pre-discount price for all schools and libraries in the carrier's service area at issue.

In these reply comments, the Citizens Companies will take the opportunity to further explain and develop their point on this issue.

## II. Existing Special Rates for Schools and Libraries

The factual circumstance of concern to the Citizens Companies arises out of a state incentive regulation plan it entered at the end of December 1996, for calendar years 1997 through 1999. In the course of negotiations, the particular commission's staff and consumer advocate contended that the Citizens LEC overearned during its previous incentive regulation plan. The parties settled the issue by agreeing to a level of rates for high speed data and related services for elementary and secondary schools in the Citizens LEC's territory. This agreed upon level of rates had nothing to do with the Citizens LEC's underlying costs. Instead, the driver in the bargain was in settlement of the overearnings' allegation. In addition, the bargain did not extend to service to libraries in the same territory.

In a case such as that just described, extension of the bargained rate to libraries would work an extreme hardship upon the Citizens LEC. The rate was neither the result of commercial negotiation, nor state mandate. Instead, it is the result of bargaining over a singular issue -- an off set of overearnings pursuant to an earlier plan. The actual cost of providing that service was not a consideration in the bargaining process. Extending those below cost rates to an additional class, such as libraries, as the "base line" for pricing and discounting would undermine the

express terms of the regulatory bargain. In addition, such an extension of the bargain would, of necessity, require implicit subsidization by other services.

The Joint Board correctly recommended that the pre-discount prices from which school/library discounts are taken be “ . . . defined as the lowest corresponding price charged to similarly situated non-residential customers for similar services . . . [emphasis added]”<sup>3</sup> In the context of the Citizens LEC situation at issue, it is clear that libraries are not similarly situated with the schools that are the subject of the incentive rate plan rates. Libraries, while certainly eligible for discounted services, are not a class included in the incentive regulation plan rates and are not similarly situated with schools under the incentive regulation plan rates. The school-specific rates should not be deemed the lowest corresponding rate for library service discounting.

The Citizens Companies believe their concern on this issue, while limited in scope to unique regulatory circumstances is significant. The final rules issued in this proceeding should recognize that the existence of these particular circumstances justify an exception to the

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<sup>3</sup> *Joint Board Recommendations* at ¶ 546.

general rule that existing special rates for schools and libraries are the appropriate rates from which Section 254(h) discounts should be taken.

Respectfully submitted,

CITIZENS UTILITIES COMPANY

A handwritten signature in black ink, appearing to read 'RM Tettelbaum', written over a horizontal line.

Richard M. Tettelbaum, Associate General Counsel  
Suite 500, 1400 16th Street, N.W.  
Washington, D.C. 20036

(202) 332-5922

January 10, 1997

## **CERTIFICATE OF SERVICE**

I, Richard M. Tettelbaum, Associate General Counsel, do hereby certify that I have this 10th day of January, 1997, delivered copies of the foregoing Reply "Comments of Citizens Utilities Company on the Federal-State Joint Board's Universal Service Recommended Decision" via first class mail, postage prepaid, to the following:

The Honorable Reed E. Hundt  
Federal Communications Commission  
1919 M Street, N.W., Room 814  
Washington, D.C. 20554

The Honorable Susan Ness  
Federal Communications Commission  
1919 M Street, N.W., Room 832  
Washington, D.C. 20554

The Honorable Rachelle B. Chong  
Federal Communications Commission  
1919 M Street, N.W., Room 844  
Washington, D. C. 20554

The Honorable Julia Johnson  
Commissioner  
Florida Public Service Commission  
Capital Circle Office Center  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

The Honorable Kenneth McClure  
Vice Chairman  
Missouri Public Service Commission  
301 W. High Street, Suite 530  
Jefferson City, Missouri 65102

The Honorable Sharon L. Nelson  
Chairman  
Washington Utilities  
& Transportation Commission  
P.O. Box 47250  
Olympia, Washington 98504-7250

The Honorable Laska Schoenfelder  
Commissioner  
South Dakota Public Utilities Commission  
500 E. Capital Avenue  
Pierre, South Dakota 57501

Martha S. Hogerty  
Public Counsel for the State of Missouri  
P.O. Box 7800  
Harry S. Truman Building  
Room 250  
Jefferson City, Missouri 65102

Paul E. Pederson, State Staff Chair  
Missouri Public Service Commission  
P.O. Box 360  
Truman State Office Building  
Jefferson City, Missouri 65102

Tom Boasberg  
Federal Communications Commission  
Office of the Chairman  
1919 M Street, N.W., Room 814  
Washington, D.C. 20554

Lisa Boehley  
Federal Communications Commission  
2100 M Street, N.W., Room 8605  
Washington, D.C. 20554

Charles Bolle  
South Dakota Public Utilities Commission  
State Capitol, 500 E. Capital Avenue  
Pierre, South Dakota 57501-5070

Deonne Bruning  
Nebraska Public Service Commission  
300 The Atrium  
1200 N Street, P.O. Box 94927  
Lincoln, NE 68509-4927

James Casserly  
Senior Legal Advisor  
Office of Commissioner Susan Ness  
Federal Communications Commission  
1919 M Street, N.W., Room 832  
Washington, D.C. 20554

John Clark  
Federal Communications Commission  
2100 M Street, N.W., Room 8619  
Washington, D.C. 20554

Bryan Clopton  
Federal Communications Commission  
2100 M Street, N.W., Room 8615  
Washington, D.C. 20554

Rowland Curry  
Texas Public Utility Commission  
1701 North Congress Avenue  
P.O. Box 13326  
Austin, Texas 78701

Bruse Ellsworth  
New Hampshire Public Utilities  
Commission  
8 Old Suncook Road, Building No. 1  
Concord, New Hampshire 03301-5185

Irene Flannery  
Federal Communications Commission  
2100 M Street, N.W., Room 8922  
Washington, D.C. 20554

Daniel Gonzalez, Legal Advisor  
Office of Commissioner Rachelle B. Chong  
Federal Communications Commission  
1919 M Street, N.W., Room 844  
Washington, D.C. 20554

Emily Hoffnar  
Federal Communications Commission  
2100 M Street, N.W., Room 8623  
Washington, D.C. 20554

L. Charles Keller  
Federal Communications Commission  
2100 M Street, N.W., Room 8918  
Washington, D.C. 20554

Lorraine Kenyon  
Alaska Public Utilities Commission  
1016 West Sixth Avenue  
Suite 400  
Anchorage, Alaska 99501

David Krech  
Federal Communications Commission  
2025 M Street, N.W., Room 7130  
Washington, D.C. 20554

Debra M. Kriete  
Pennsylvania Public Utilities Commission  
P.O. Box 3265  
Harrisburg, Pennsylvania 17105-3265

Diane Law  
Federal Communications Commission  
2100 M Street, N.W., Room 8920  
Washington, D.C. 20554

Mark Long  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Gerald Gunter Building  
Tallahassee, Florida 32399-0850

Robert Loube  
Federal Communications Commission  
2100 M Street, N.W., Room 8914  
Washington, D.C. 20554

Sandra Makeeff  
Iowa Utilities Board  
Lucas State Office Building  
Des Moines, Iowa 50319

Philip F. McClelland  
Pennsylvania Office of the  
Consumer Advocate  
1425 Strawberry Square  
Harrisburg, Pennsylvania 17120

Michael A. McRae  
D.C. Office of the People's Counsel  
1133 15th Street, N.W., Suite 500  
Washington, D.C. 20005

Tejal Mehta  
Federal Communications Commission  
2100 M Street, N.W., Room 8625  
Washington, D.C. 20554

Terry Monroe  
New York Public Service Commission  
Three Empire Plaza  
Albany, New York 12223

John Morabito, Deputy Chief  
Accounting & Audits Division  
Common Carrier Bureau  
Federal Communications Commission  
2000 L Street, N.W., Suite 812  
Washington, D.C. 20554

Mark Nadel  
Federal Communications Commission  
2100 M Street, N.W., Room 8916  
Washington, D.C. 20554

Lee Palagyi  
Washington Utilities and  
Transportation Commission  
P.O. Box 47250  
Olympia, Washington 98504-7250

Kimberly Parker  
Federal Communications Commission  
2100 M Street, N.W., Room 8609  
Washington, D.C. 20554

Barry Payne  
Indiana Office of the Consumer Counsel  
100 North Senate Avenue, Room N501  
Indianapolis, IN 46204-2208

Jeanine Poltronieri  
Federal Communications Commission  
2000 L Street, N.W., Suite 257  
Washington, D.C. 20036

James Bradford Ramsay  
National Association of  
Regulatory Utility Commissioners  
1201 Constitution Avenue, N.W.  
Washington, D.C. 20423

Brian Roberts  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

Gary Seigel  
Federal Communications Commission  
2000 L Street, N.W., Room 812  
Washington, D.C. 20554

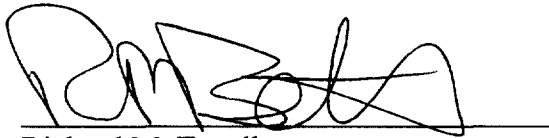
William Sharkey  
Federal Communications Commission  
1919 M Street, N.W., Room 534N  
Washington, D.C. 20554

Richard D. Smith  
Federal Communications Commission  
2100 M Street, N.W., Room 8605  
Washington, D.C. 20554

Pamela Szymczak  
Federal Communications Commission  
2000 L Street, N.W., Room 257  
Washington, D.C. 20036

Brad Wimmer  
1919 M Street, N.W., Room 518  
Washington, D.C. 20554

Lori Wright  
Federal Communications Commission  
2100 M Street, N.W., Room 8603  
Washington, D.C. 20554

A handwritten signature in black ink, appearing to read 'R. M. Tettelbaum', written over a horizontal line.

Richard M. Tettelbaum